

The Honorable Karen A. Overstreet  
Chapter 11  
Hearing Date: September 22, 2010  
Hearing Time: as set by Court order,  
emergency hearing requested  
Hearing Location: 700 Stewart St., 7th Floor  
Seattle, WA  
Response Date: at the hearing

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

THE CASCADIA PROJECT LLC  
EIN: 20-4188863,  
  
Debtor.

Case No. 09-20780

THE CASCADIA PROJECT LLC'S  
EMERGENCY MOTION TO REIMPOSE  
THE AUTOMATIC STAY AND FOR  
DETERMINATION OF DEBTOR'S  
OBLIGATIONS UNDER  
11 U.S.C. § 362(d)(3)(B) (SARE)

The Cascadia Project LLC ("Cascadia"), by and through its attorneys of record  
Geoffrey Groshong, Daniel A. Brown, and Miller Nash LLP, hereby moves the court, on an  
emergency basis, for the reimposition of the automatic stay ("Motion"). This Motion is based on  
the files and records herein and the declaration of Daren Barone ("Barone Dec.") in support of  
the Motion filed concurrently herewith, and the declarations of Pat McCarthy ("McCarthy Dec.")  
Kevin Padrick ("Padrick Dec.") filed concurrently herewith.

**I. BACKGROUND**

1. Cascadia commenced this case on October 15, 2009 (the "Petition Date").  
Cascadia has retained control over its assets, and continues to operate its business pursuant to  
11 U.S.C. §§ 1107 and 1108.  
2. Cascadia's primary business operation is the development of  
approximately 4,200 acres of land located near Orting and Bonney Lake, Washington (the

1 “Land”), as an employment based planned community (the “Community”), including the  
2 planned development of residential, commercial, business and educational properties. Cascadia,  
3 through contractors, also conducts timber harvesting on the Land and on adjoining property  
4 owned by Cascadia Resort Communities LLC. The Land was originally purchased in 1991 by a  
5 wholly-owned subsidiary of a Bahamian corporation owned by a group of Taiwan investors.  
6 Cascadia was formed in 1999 as a Washington limited liability company whose sole member and  
7 manager is Patrick Kuo. Cascadia took title to the Land in 2006.

8           3.       HomeStreet Bank (“HomeStreet”) has claims against Cascadia in the  
9 approximate amount of \$75,000,000 (seventy-five million dollars). HomeStreet’s claims are  
10 secured by the Land. The claims are related to two loans made to Cascadia, one in the principal  
11 amended amount of \$40,000,000 (the “Infrastructure Development Loan”) and the other in the  
12 principal amount of \$36,400,000 (the “Acquisition and Development Loan”).

13           4.       On December 11, 2009, the Court gave its oral ruling granting  
14 HomeStreet’s motion for an order determining that Debtor’s real property was single asset real  
15 estate and entered a written order on December 18, 2009 [Dkt. #120] (the “SARE Order”),  
16 holding that Debtor’s real property is “single asset real estate” as defined by 11 U.S.C.  
17 § 101(51)(B) and for the purposes of 11 U.S.C. § 362(d)(3).

18           5.       With the filing of the SARE Order, 11 U.S.C. § 362(d)(3) was activated,  
19 such that if HomeStreet noted a motion for relief from stay it would be granted, absent one of the  
20 following events within 90 days of the order for relief,

21           “(A) the debtor has filed a plan of reorganization that has a reasonable possibility  
22 of being confirmed within a reasonable time; or

23           (B) the debtor has commenced monthly payments that

24                   (i) may, in the debtor’s sole discretion, notwithstanding section  
25                   363(c)(2), be made from rents or other income generated before, on or  
26                   after the date of the commencement of the case by or from the property  
                    to each creditor whose claim is secured by such real estate ...” 11  
                    U.S.C. § 362(d)(3).

1                   6.       On December 23, 2009, the Court set the amount of Cascadia's monthly  
2 payment to HomeStreet pursuant to 11 U.S.C. § 362(d)(3)(B) at \$266,057 (the "SARE  
3 Payment"). [Dkt. #128].

4                   7.       In February 2010, Cascadia commenced payments under 11 U.S.C.  
5 §362(d)(3)(B).

6                   8.       On June 30, 2010, after a three day trial held on June 22, 23, and 24, 2010,  
7 on the HomeStreet's two motions for relief [Dkt. #121 and Dkt. #299], this Court entered its  
8 Order on Motions for Relief from the Automatic Stay Filed by HomeStreet Bank [Dkt. #493],  
9 denying HomeStreet's motions for relief.

10                  9.       On August 5, 2010, the Court entered an agreed order retroactively  
11 recalculating payments due under 11 U.S.C. § 362(d)(3)(B) ("SARE Payments") at \$240,377.50  
12 and applying an overpayment of \$154,307 to the August SARE Payment. [Dkt. # 535]. Cascadia  
13 did not make the August SARE Payment to HomeStreet.

14                  10.      On August 1, 2010, HomeStreet filed a renewed motion for relief from the  
15 automatic stay. [Dkt. # 528]. The hearing on the motion was set on shortened time.  
16 [Dkt. # 532]. The Court granted HomeStreet relief from stay on August 6, 2010, but refused to  
17 waive the 14-day stay period provided under Rule 4001(a)(3). [Dkt. # 545]. During the Court's  
18 oral ruling on August 6, 2010, the Court indicated that Cascadia could move the Court, on an  
19 emergency basis and on shortened time, for the reimposition of the automatic stay before  
20 HomeStreet's foreclosure sale. The Court stated that it would not be necessary that Cascadia  
21 have a plan confirmed in order for the automatic stay to be reimposed, but did state that Cascadia  
22 would need to come to Court with more than just the unsupported declaration of Mr. Padrick and  
23 would need evidence of financing either witness, declaration or correspondence.

24                  11.      HomeStreet has scheduled the sale of Cascadia's personal property for  
25 Thursday, September 23, 2010 at 4:00 pm. Additionally, HomeStreet has scheduled the sale of  
26 Cascadia's real property for Friday, September 24, at 10:30 a.m. *See* Padrick Dec. ¶ 3.



1 F.R.Civ.P. 60(b), “the court may relieve a party...from a final judgment, order, or proceeding  
2 for...any reason that justifies relief.” F.R.Civ.P. 60(b)(6).

3 16. The Ninth Circuit has stated that Rule 60(b) “compliments the  
4 discretionary power that bankruptcy courts have as courts of equity ‘to reconsider, modify or  
5 vacate their previous orders so long as no intervening rights have become vested in reliance on  
6 the orders.’” *In re Int’l Fibercom*, 503 F.3d 933, 940 (9th Cir. 2007) (citing *Meyer v. Lenox*, 902  
7 F.2d 737, 740 (9th Cir. 1990) (citing *Chinichian v. Campolongo*, 664 F.2d 1158, 1161 (9th Cir.  
8 1981))). The Ninth Circuit has further stated that “Rule 60(b)(6) should be ‘liberally applied’”  
9 *Id.* (citing *Yanow v. Weyerhaeuser S.S. Co.*, 274 F.2d 274, 284 (9th Cir. 1958). Rule 60(b)(6),  
10 however, should be “utilized only where extraordinary circumstances prevented a party from  
11 taking timely action to prevent or correct erroneous judgment. *Id.* (citing *United States v.*  
12 *Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005). A party moving for such relief “must  
13 demonstrate both injury and circumstances beyond his control that prevented him from  
14 proceeding with...the action in a proper fashion.” *Community Dental Servs. v. Tani*, 282 F.3d  
15 1164, 1168 (9th Cir. 2002). A bankruptcy court’s grant of relief from an order under F.R.Civ.P.  
16 60(b) is reviewed for abuse of discretion. *Casey v. Albertson’s Inc.*, 362 F.3d 1254, 1257 (9th  
17 Cir. 2004).

18 17. Here, extraordinary circumstances exist warranting relief under Rule  
19 60(b)(6). Further, Cascadia can demonstrate both injury and circumstances beyond its control  
20 preventing it from proceeding with this action until now. Extraordinary circumstances have  
21 prevented Cascadia from seeking the reimposition of the automatic stay until now. Although  
22 Obsidian, Yarrow Bay, and Cascadia have been working tirelessly to find equity to finance  
23 reorganization, it was not until the afternoon of September 21, 2010, that LJCI committed to  
24 making the investment required to fund Cascadia’s reorganization. *See* Padrick Dec. ¶ 4. It was  
25 not until the afternoon of September 21, 2010, that Pierce County was able to make the needed  
26 assurances for the funding of the 198<sup>th</sup> Street Corridor. *See* Padrick Dec. ¶ 4.

1           18.     Cascadia is presenting this Motion in a manner consistent with the Court's  
2 instructions. The Court stated that Cascadia could move the Court for reimposition of the  
3 automatic stay if Cascadia could secure funding and present evidence of such funding before the  
4 Court. As evidenced by the declarations of Daren Barone and Pat McCarthy a deal is now on the  
5 table and Cascadia's reorganization efforts are alive and well. Under the plan, LJCI will invest  
6 \$17.6 million into Cascadia's reorganization. *See* Barone Dec. ¶ 4. Additionally, Pierce County  
7 will ultimately fund the construction of the 198<sup>th</sup> Street corridor in the approximate amount of  
8 \$15 million. *See* McCarthy Dec. ¶ 6. The plan calls for a 25 year amortization of HomeStreet's  
9 secured claim of approximately \$55 with a balloon at the end of the 7<sup>th</sup> year. *See* Barone Dec. ¶  
10 5. HomeStreet's secured claim will accrue interest at the rate of prime plus 1% fully floating.  
11 *See* Barone Dec. ¶ 5. HomeStreet's unsecured claim will be paid in 300 equal monthly payments  
12 without interest. *See* Barone Dec. ¶ 5. Unsecured creditors will receive equal quarterly  
13 payments over 5 years, beginning in the second year after the plan's effective date, in the amount  
14 of their approved claims. *See* Barone Dec. ¶ 5. Accordingly, the automatic stay should be  
15 reimposed as Cascadia has found the necessary equity funding to support the above described  
16 plan and has presented to the Court sworn statements evidencing such funding commitments.

17           19.     Cascadia further requests that the Court determine its obligations under  
18 11 U.S.C. § 362(d)(3)(B). Pursuant to 11 U.S.C. § 362(d)(3), the court may grant relief if a  
19 single asset real estate debtor fails to file a plan of reorganization within 90 days of filing its  
20 petition for relief or if the SARE debtor fails to commence monthly payments within 30 days  
21 after the court determines the debtor is holding single asset real estate. As such, the only purpose  
22 of the debtor tendering a SARE Payment is to prevent a lifting of the automatic stay. Once the  
23 stay has been lifted, any further SARE Payment is ineffectual.

24           20.     Because there is no case law on point in regard to tendering of SARE  
25 Payments after the reimposition of the automatic stay, Cascadia is requesting that the Court make  
26 a determination as to the extent of Cascadia's obligations under 11 U.S.C. § 362(d)(3)(B). Based

1 on the foregoing, it is Cascadia's position that SARE Payments are only required when the  
2 automatic stay is in place or back in place, thus, once the stay is reimposed, SARE Payments will  
3 again become due on a going forward basis. If the stay is reimposed, Cascadia will be  
4 responsible for SARE Payments going forward. Cascadia, will however, be responsible for the  
5 full monthly payment for October and any subsequent month that the automatic stay is in place.

#### 6 IV. CONCLUSION

7 Based on the foregoing, Cascadia respectfully requests the Court reimpose the  
8 automatic stay. A copy of the Proposed Order Reimposing the Automatic Stay and  
9 Determining Debtor's Obligations under 11 U.S.C. § 362(d)(3)(B)(SARE) is attached as  
10 Exhibit A.

11 DATED this 21st day of September, 2010.

12 MILLER NASH LLP

13 /s/ Geoffrey Groshong

14 Geoffrey Groshong, WSB No. 6124

15 Daniel A. Brown, WSB No. 22028

16 Danielle M. Cross, WSB No. 41792

17 Attorneys for Debtor

18 The Cascadia Project LLC